



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7**

11201 Renner Boulevard
Lenexa, Kansas 66219

17 FEB 2017

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

Article No.: 7014 1200 0000 6126 0907

Justin T. Wiebe
J & C Farm & Livestock, Inc.
13620 NW Santa Fe Lake Road
Whitewater, Kansas 67154

Dear Mr. Wiebe:

**Letter of Warning and
Request for Information**

The U.S. Environmental Protection Agency has identified as a national priority the environmental impacts associated with discharges from Concentrated Animal Feeding Operations. Discharges from CAFOs can impact water quality, pose risks to human health, threaten aquatic life and its habitat and impair the use and enjoyment of waterways. CAFOs are regulated under the federal Clean Water Act and are required to control manure and process wastewater runoff in order to avoid unauthorized discharges into waters of the United States.

On July 21, 2015, a representative of the EPA inspected the J & C Farm & Livestock, Inc. feedlot located at 13620 NW Santa Fe Lake Road, Whitewater, Kansas 67154. A copy of the inspection report was transmitted to you on April 25, 2016.

The EPA has completed its review of this inspection and determined that the Facility does not have adequate runoff controls in place to prevent manure and process wastewater from discharging into Henry Creek and its tributaries during significant precipitation events. Specifically, the EPA documented:

- 1) The discharge of process wastewater from the feedstock storage area and lots 3 through 6 into an unnamed tributary of Henry Creek north of the Facility through a culvert under Santa Fe Lake Road; and
- 2) The discharge of process wastewater from the manure stockpile area, lots 1 and 2 and lots 7 through 14 into an unnamed tributary of Henry Creek south of the Facility through a culvert under Santa Fe Lake Road.

These culverts constitute a man-made ditch, flushing system, or similar man-made device. The EPA inspector also obtained a water sample in the unnamed tributary north of the facility that documented high concentrations of E. coli bacteria, phosphorus, chlorides and other pollutants



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routinely associated with manure and process wastewater. Because the Facility confines between 300 and 999 head of beef cattle and the culverts facilitate the drainage of manure and process wastewater from the Facility to Henry Creek, the EPA believes the Facility meets the definition of a medium CAFO.

Be advised that any discharge of manure solids or process wastewater from a medium CAFO to a water of the United States is a violation of the CWA, unless it is pursuant to a National Pollutant Discharge Elimination System permit. Unpermitted discharges are a serious violation of the CWA that can result in the EPA pursuing an enforcement action that may include penalties.

In order to achieve compliance at the Facility, the following four options are available:

1. Permanently eliminate all pollutant discharges from the Facility;
2. Eliminate the use of the man-made conveyances to facilitate discharges;
3. Contact the Kansas Department of Health and Environment to apply for, obtain, and properly implement an NPDES permit; or
4. Reduce the number of cattle confined at the Facility below the threshold of a medium CAFO (less than 300 head).

It was the EPA's understanding, as a result of the inspection and communication with J & C Farm & Livestock Inc., that you would be working with the Butler County NRCS to prepare plans to build livestock waste control facilities. Pursuant to Section 308 of the CWA, the EPA seeks specific information, as detailed in the enclosed information request, about those plans and the steps you have taken to ensure the Facility's compliance with the CWA and implementing regulations. Section 308 authorizes the EPA to collect information for the purpose of carrying out the objectives of the CWA, including but not limited to, determining the compliance status of an animal feeding operation. The information you provide can help inform the EPA's evaluation of the Facility's compliance with the CWA. Please submit your response within 30 days of your receipt of this letter. The enclosure with this letter contains instructions for completing the request followed by the requested information. Please carefully read and follow those instructions. Please send your response to:

Stephen Pollard
U.S. Environmental Protection Agency
Water, Wetlands and Pesticides Division
Water Enforcement Branch
11201 Renner Blvd.
Lenexa, Kansas 66219

While the information requested herein must be submitted notwithstanding any claim concerning confidentiality, J & C Farm & Livestock, Inc. may assert a business confidentiality claim covering any part of the information set forth in its response in accordance with the provisions of 40 C.F.R. § 2.203(b). Appendix A of this letter provides additional information regarding the assertion and substantiation requirements for making a business confidentiality claim.

The EPA reserves its right to pursue appropriate enforcement actions, including penalties, for violations discovered as a result of this inspection. If you have any questions regarding this

letter or enclosed information request, please contact Stephen Pollard at (913) 551-7582, or pollard.stephen@epa.gov, or Clarissa Howley Mills, the attorney assigned to this matter, at (913) 551-7743, or mills.clarissa@epa.gov. Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffery Robichaud". The signature is fluid and cursive, with the first name "Jeffery" being more prominent and the last name "Robichaud" following in a similar style.

Jeffery Robichaud
Acting Director
Water, Wetlands and Pesticide Division

Enclosure

cc: Tara Mahin, Kansas Department of Health and Environment

Information Request
J & C Farm & Livestock, Inc.

For purposes of this information request, the definitions set forth in Section B shall apply and should be considered carefully by you in preparing your responses.

A. INSTRUCTIONS

- 1) Your response must be provided within thirty (30) days of receipt of this information request. The deadline for submittal must be complied with unless a written extension or stay of the deadline for response has been provided by the EPA.
- 2) Perform a thorough and complete search for all information in J & C Farm & Livestock, Inc.'s possession, custody, and/or control for information that is responsive to this information request. This includes all information that may be in the possession of a third party which J & C Farm & Livestock, Inc. has the right or ability to obtain upon request or demand. This also includes the obligation to provide written descriptions of responsive information that are based on the personal knowledge of employees of J & C Farm & Livestock, Inc., including, but not limited to, yourself and/or other employees that worked at or supervised the operations of the referenced Facility.
- 3) Provide the response to each question/request in accordance with the schedule for response and any other instructions specifically set forth for that question/request.
- 4) Provide a separate narrative response to each and every question and subpart of a question set forth in this information request.
- 5) Precede each answer with the number of the question/request to which it corresponds.
- 6) For each and every request, identify all persons consulted in the preparation of the answer.
- 7) Identify the person(s) responding on your behalf to each numbered item in this information request, including their name, title, or position, and organization if other than the J & C Farm & Livestock, Inc.
- 8) For each and every question in this information request, identify all documents consulted, examined, or referred to in the preparation of the answer or that contain information responsive to the question and provide true and accurate copies of all responsive documents. (If information responsive to an item is available but there are no relevant source documents, you must still provide a narrative response to the request/question.)
- 9) For each document produced in response to the information request, indicate on the document, or in some other reasonable manner, the number of the question/request to which it responds.
- 10) If information responsive to a requested item is not in your possession, identify the person(s) from whom the information may be obtained.
- 11) If information that is not known or available at the time you make your response later becomes known or available to you, you must supplement your response.

- 12) If at any time after you submit your response you find that any part of the information you submitted is incomplete, inaccurate, or misrepresents facts, you must notify the EPA immediately.
- 13) The information requested herein must be provided notwithstanding its possible characterization as confidential information or trade secrets pursuant to 40 C.F.R. § 2.203(b). Appendix A to this letter specifies the assertion and substantiation requirements for business confidentiality claims.
- 14) The EPA encourages you to conserve resources. Suggested methods include use of recycled paper, printing on both sides (duplex printing), and submitting documents electronically (i.e., email or non-rewritable discs) when possible. If hard copy submittals are necessary, please do not submit documents in binders. All documents must be submitted in a legible and readable form.
- 15) Each transmittal of information provided by J & C Farm & Livestock, Inc. in response to this information request shall be accompanied by a completed and signed Statement of Certification, as provided in Part D, signed by a responsible corporate officer for J & C Farm & Livestock, Inc.
- 16) A request for an extension to the time limit for responding must be in writing and sent within five (5) calendar days of receipt of this information request. Please address the request to the EPA contact identified in the cover letter.

B. DEFINITIONS

All terms used in the foregoing letter and in this information request will have their ordinary meaning unless such terms are defined in the Clean Water Act or other Clean Water Act implementing regulations. Definitional clarification is specified below.

- 1) "You" or "Your" means J & C Farm & Livestock, Inc. including but not limited to its predecessors, successors, subsidiaries, parent companies, affiliates, d/b/a, divisions, branches, offices, franchises, facilities, committees, trusts, partnerships and joint ventures in which it has any interest; all entities for which it is acting as an agent or contractor; and its past or present officers, directors, trustees, managers, employees, agents, consultants, contractors, attorneys, representatives and any other persons acting on its behalf.
- 2) Pursuant to Section 502(5) of the CWA, 33 U.S.C. § 1362(5), "person" as used herein, in the plural as well as the singular, includes an individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, or any interstate body and any officer, agent or employee thereof.
- 3) "Employee" shall mean any common law employee, contractor, sub-contractor or independent contractor working for J & C Farm & Livestock, Inc. in any capacity.
- 4) "And" as well as "or" shall be construed either conjunctively or disjunctively as necessary to bring within the scope of this information request all information which might otherwise be construed to be outside its scope.
- 5) "Furnish," "describe," "identify" or "indicate" means turning over to the EPA duplicate copies of the requested information in the possession, custody or control of J & C Farm & Livestock, Inc. Where specific information has not been memorialized in any document but is nonetheless responsive to a request, you must respond to the request with a written response. If such requested information is not in your possession, custody or control then indicate where such information or documents may be obtained.
- 6) "Document" or "documents" means any written, recorded or graphic material of any kind, whether prepared by you or by any other person that is in your possession, custody or control. The term includes but is not limited to: contracts, agreements, certificates, permits, letters, facsimiles, telegrams, interoffice communications, email messages and attachments, memoranda, notes, books, files, records, reports, evaluations, proposals, analyses, notebooks, surveys, lists, outlines, drafts, schedules, pamphlets, newsletters, flyers, charts, logs, tabulations, compilations, telephone books or messages, visitor books, calendar or diary entries, desk or appointment calendars, day planners, business cards, minutes or notations or records of meetings or conferences, notes or memos or other records of telephone or other conversations or communications, ledgers, bills, invoices, purchase orders, shipping orders, statements of receipt or shipment, work requests, work orders, scribblings, marginalia, drawings, depictions, maps, testing data, receipts, photographs, diagrams, illustrations, plans, blueprints, schematics, photostats, microfilm, microfiche, audio and video tape or disc recordings and computer printouts. It also includes electronically stored data from which information can be obtained either directly or by translation through detection devices or readers, including but not limited to information stored on a computer hard drive, magnetic tape, cassette, disk, CD, Internet Service Provider or network. Any such document is to be produced in usable form, along with instructions for reading such data. As indicated in the preceding section, the term "document" includes the original (or a copy thereof if the original is not available) and all copies that differ in any respect from the original, or that bear any handwriting, notation, marking or information not on the original.

C. INFORMATION REQUEST

Information requested pursuant to Section 308 of the CWA, 33 U.S.C. § 1318:

- 1) Identify the person(s) responding to this request. Include names, titles, telephone numbers and email addresses.
- 2) Identify the person(s) consulted in preparing the responses to this request. Include names, titles, telephone numbers and email addresses.
- 3) Identify all documentation consulted, examined or referred to in preparing the answers to this request and provide copies of all such documents.
- 4) Describe and document through as-built plans, diagrams and/or photographs the runoff controls that have been constructed to ensure that any release of process wastewater and manure solids from the Facility will not discharge into the unnamed tributaries of Henry Creek.
- 5) Describe the best management practices implemented at the Facility to ensure that any release of process wastewater and manure solids from the Facility is not discharged into the unnamed tributaries of Henry Creek.
- 6) Provide the exact inventory of cattle at the Facility and/or copies of animal inventory records or other documentation establishing the number of cattle maintained at the Facility between July 1, 2015, and February 1, 2017.
- 7) Provide the monthly average and monthly maximum number of cattle in confinement at the Facility between July 1, 2015, and February 1, 2017.

D. CERTIFICATION OF RESPONSES

STATEMENT OF CERTIFICATION

J & C Farm & Livestock, Inc. is submitting the enclosed documents in response to the EPA's request for information to determine whether the J & C Farm & Livestock, Inc. is in compliance with the Clean Water Act and implementing regulations.

I am a responsible officer of _____.

I certify under penalty of law that I have personally examined and am familiar with, the statements and information submitted in the enclosed documents, including all attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, correct, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information, or omitting required statements and information, including the possibility of fine or imprisonment.

Date: _____

Signature: _____

Title _____

Appendix A

Confidential Business Information (CBI) Assertion and Substantiation Requirements

A. Assertion Requirements

You may assert a business confidentiality claim covering all or part of the information requested in the attached letter, as provided in 40 C.F.R. § 2.203(b). To make a confidentiality claim, submit the requested information and indicate that you are making a claim of confidentiality. Any document over which you make a claim of confidentiality should be marked by placing on or attaching to the information, at the time it is submitted to United States Environmental Protection Agency (EPA), a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as “trade secret” or “proprietary” or “company confidential” and a date, if any, when the information should no longer be treated as confidential. Information covered by such a claim will be disclosed by the EPA only to the extent permitted and by means of the procedures set forth by 40 C.F.R. Part 2. Allegedly confidential portions of otherwise non-confidential documents should be clearly identified. EPA will construe the failure to furnish a confidentiality claim with your response to the attached letter as a waiver of that claim and the information may be made available to the public without further notice to you.

Please segregate personnel, medical and similar files from your responses and include that information on separate sheet(s) marked as “Personal Privacy Information” given that disclosure of such information to the general public may constitute an invasion of privacy.

B. Substantiation Requirements

All confidentiality claims are subject to EPA verification and must be made in accordance with 40 C.F.R. § 2.208 which provides in part that you satisfactorily show that you have taken reasonable measures to protect the confidentiality of the information and that you intend to continue to do so; and that the information is not and has not been reasonably obtainable by legitimate means without your consent.

Pursuant to 40 C.F.R. Part 2, Subpart B, EPA may at any time send you a letter asking you to substantiate fully your CBI claim. You must provide EPA with a response within the number of days set forth in the EPA request letter. Failure to submit your comments within that time will be regarded as a waiver of your confidentiality claim or claims and EPA may release the information. EPA will ask you to specify which portions of the information you consider confidential. **You must be specific by page, paragraph and sentence when identifying the information subject to your claim.** Any information not specifically identified as subject to a confidentiality claim may be disclosed to the requestor without further notice to you. For each item or class of information that you identify as being subject to CBI, EPA will ask you to answer the following questions, giving as much detail as possible:

- I. For what period of time do you request that the information be maintained as confidential, e.g., until a certain date, until the occurrence of a specified event or permanently? If the occurrence of a specific event will eliminate the need for confidentiality, please specify that event.
- II. Information submitted to EPA becomes stale over time. Why should the information you claim as confidential be protected for the time period specified in your answer to question #1?

- III. What measures have you taken to protect the information claimed as confidential? Have you disclosed the information to anyone other than a governmental body or someone who is bound by an agreement not to disclose the information further? If so, why should the information still be considered confidential?
- IV. Is the information contained in any publicly available material such as the Internet, publicly available databases, promotional publications, annual reports or articles? Is there any means by which a member of the public could obtain access to the information? Is the information of a kind that you would customarily not release to the public?
- V. Has any governmental body made a determination as to the confidentiality of the information? If so, please attach a copy of the determination.
- VI. For each category of information claimed as confidential, explain with specificity why release of the information is likely to cause substantial harm to your competitive position. Explain the specific nature of those harmful effects, why they should be viewed as substantial and the causal relationship between disclosure and such harmful effects. How could your competitors make use of this information to your detriment?
- VII. Do you assert that the information is submitted on a voluntary or a mandatory basis? Please explain the reason for your assertion. If you assert that the information is voluntarily submitted information, explain whether and why disclosure of the information would tend to lessen the availability to EPA of similar information in the future.
- VIII. Any other issue you deem relevant.

If you receive a request for a substantiation letter from the EPA, you bear the burden of substantiating your confidentiality claim. Conclusory allegations will be given little or no weight in the determination. In substantiating your CBI claim(s), EPA will require you to bracket all text so claimed and mark it "CBI." Information so designated will be disclosed by EPA only to the extent allowed by, and by means of the procedures set forth in, 40 C.F.R. Part 2, Subpart B. If you fail to claim the information as confidential, it may be made available to the public without further notice to you.